



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Patrick Russell
Russell & Alegria, P.C.
37 West Elizabeth Street
Brownsville, Texas 78520-5545

OR98-2688

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119629.

The Port Isabel Housing Authority (the authority), which you represent, received a request for all correspondence between the Port Isabel city manager and the authority concerning the efforts to obtain housing for a named individual. You assert that portions of the requested information are protected by a right of privacy under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Specifically, you contend that the requested information indicates the housing applicant's number of children, their age, and family members, and a debt owed to the authority. You contend that this information is excepted by a right of privacy. We point out initially that none of the requested information consists of personal financial information submitted under an authority program. Such information is confidential by statute. Gov't Code § 2306.039; *see* Open Records Decision No. 373 (1983) (discussing federal law and personal financial information).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common-law and constitutional privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore,

information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

In Open Records Decision No. 318 (1982), this office concluded that the names and present addresses of former residents of a public housing development were not excepted by constitutional or common law privacy. We have also found that information on a housing grant application regarding the applicant's family composition, employment, age, and ethnic origin is not ordinarily excepted by common law privacy. Open Records Decision No. 373 (1983). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not excepted by common law privacy. Open Records Decision No. 268 (1981); *see* Open Records Decision No. 385 (1983) (determining that a public hospital's accounts receivable showing patients' names and the amounts they owed were open to the public), Open Records Decision No. 374 (1983) (names of doctors who receive medicaid payments, and the amounts paid are subject to disclosure). We have examined the submitted documents and conclude that most of the information is not protected by a right of privacy. A portion of the letters, however, deals exclusively with the applicant's family situation wherein there is no legitimate public interest. We have marked the information that must be withheld. The remaining information, including the applicant's name, her family composition, and her debt to the authority must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 119629

Enclosures: Submitted documents

cc: Ms. Elizabeth S. Sweeten
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